The defense claimed that the provisions in Sec. 4990 of the code were in violation of the Fourteenth Amendment. The State by showing that adulteration laws were within the police power of the State conclusively proved that they were without the scope of the Constitution. *Railroad Co.* v. *Husen*, 95 U. S. 465, and *Barbier* v. *Connoly*, 113 U. S. 27.

BANKS AND BANKING—COLLECTION OF DRAFT—PAYMENT BY CHECK—PROTEST—LIABILITY OF BANK.—KERKHAM V. BANK OF AMERICA, 58 N. E. 753 (N. Y.).—A bank receives from one of its depositors a draft for collection. The depositary sends the draft to the bank of the drawee, and receives a check in payment, which it credits to the account of the plaintiff. The check is afterward protested. *Held*, that the defendant bank has become a debtor and is liable as such to the plaintiff.

In this case it seems that there is but one legal conclusion possible, and that is that the defendant must be deemed to have intended to treat the draft as paid, and that intention was conclusively expressed when it entered the item as a credit to the plaintiff. The question of that intention was purely one of law (*Clark* v. *Bank*, 2 N. Y. 380) and within the rule as laid down in *Whiting* v. *Bank*, 77 N. Y. 363.

CARRIERS—NEGLIGENCE—RELEASE.—JEFFREYS V. SOUTHERN RY. CO., 37 S. E. Rep. (N. C.) 515.—An instrument which begins by setting forth a claim for personal injury and releases such claim, "set forth above," in consideration of $40, and concludes with the provision that this release shall apply to all other claims for injury as well, is inoperative as to another prior injury. The court here *held* the concluding provision failed for want of consideration.

The case is in line with the principle stated in the third section on Limitations, 2 *Roll. Abri.* 409, which was denied by Lord Holt in *Knight* v. *Cole*, 1 Show. 155, but was approved by Lord Ellenborough in *Paylor* v. *Homersham*, 4 M. & S. 426.

CONSTITUTIONAL LAW—INDICTMENT—GRAND JURY—EXCLUDING NEGROES. —COLLINS V. STATE, 60 S. W. 42 (Tex.).—Appellant, a negro, moved to quash an indictment against him on the ground that negroes were intentionally excluded from the grand jury which indicted him. *Held*, that the refusal to quash the indictment was in violation of the Fourteenth Amendment of the Federal Constitution.

The Court reached its decision on the ground that even though the jury commissioners were not prejudiced against negroes, the mere fact that they had not been selected because it was not the custom for negroes to serve on grand juries, even though a large number were qualified, was an intent to exclude and therefore a violation of rights granted them by the Fourteenth Amendment of the Federal Constitution. *Carter* v. *Texas*, 177 W. S. 442.

CONTRACTS IN RESTRAINT OF TRADE.—CUMMINS V. BLUESTONE ASSOCIATION. 58 N. E. Rep. 525 (N. Y.).—A contract between the producers of ninety per cent of the bluestone put upon the New York market, whereby the price is to be fixed by the Association, is void notwithstanding its object is to procure reasonable profits, and the prices charged are not excessive. Nor need the article be of prime necessity.

This illustrates the persistency with which the law visits the penalty of avoidance on contracts which deprive, even by possibility, the public of the ad-

vantages that flow rom free competition. *Vide, United States* v. *Freight Association*, 166 U. S. 290-346; *United States* v. *Addystone Pipe Co.*, 175 U. S. 1, and *People* v. *Sheldon*, 139 N. Y. 251. As a result such associations are rare, and trusts numerous. The soundness of the rule of law is now in process of an economical test.

CONTRIBUTORY NEGLIGENCE—RECKLESS AND WILLFUL MISCONDUCT.—ILLINOIS CENT. R. CO. v. BROWN, 28 Sou. Rep. (Miss.) 949.—Passenger riding on top of a car having no brakes applied, upon a down grade switch track, was injured by its colliding with a moving train upon the main track. *Held*, contributory negligence of plaintiff does not bar a recovery where defendant has been guilty of gross, willful, or reckless misconduct.

This decision is in strict conformity with the decisions in *Mettlestadt* v. *Ninth Ave. R. R. Co.*, 32 How. Pr. Super. Ct. 482, and *Clairborne* v. *K. & T. Ry. Co.*, 57 S. W. Rep. 336. For cases with opposite ruling, see *Chicago, etc. R. R. Co.* v. *Rielly*, 40 Ill. App. 416, and *Florida Southern R. R. Co.* v. *Hurst*, 30 Fla. 39.

ERROR TO STATE COURT—RIGHT TO RAISE CONSTITUTIONAL QUESTION.—TYLER V. JUDGES OF THE COURT OF REGISTRATION, 21 Supreme Ct. 206.—The Torrens Act of Massachusetts provided a land court of final jurisdiction. One Gould disputed the boundary of Tyler's land and brought the question before the land court for settlement. Tyler petitioned Massachusetts Supreme Court for writ of prohibition restraining land court from proceeding, and alleged unconstitutionality of Torrens Act. *Held*, Tyler had not sufficient interest in the litigation to draw in question the constitutionality of the act. Fuller, C. J., Harlan, Brewer and Shiras, JJ., dissenting.

The Massachusetts Court did not question Tyler's competency to be heard and determined the Federal question presented. This raises an interesting point whether the Supreme Court can decline to exercise its jurisdiction when all requisite elements are present, because of any supposed error on part of State court in entertaining the suit. The proper rule would seem to be that of *Wheeling and B. Bridge Co.* v. *Wheeling Bridge Co.*, 138 U. S. 287, and *Luxton* v. *North River Bridge Co.*, 147 U. S. 337, that the decision of the highest court of a State as to the finality of proceedings before it, is to be accepted in exercising appellate jurisdiction. Against the opinion that the Massachusetts court erred in entertaining the suit, see *Weston* v. *Charleston*, 2 Pet. 449, where, on a similar state of facts, Chief Justice Marshall held a writ of error to be properly issued and reviewed the Federal question presented.

ERROR TO STATE COURT—IMPAIRING OBLIGATION OF CONTRACT—EXEMPTING FROM TAXATION.—STEARNS V. MINNESOTA EX REL. MARR, 21 Supreme Ct. 73.—Lands lying in Minnesota were granted to that State by Congress for public purposes. In 1865 the State Legislature granted said lands to companies to aid in construction of railroads, agreeing upon payment of three per cent on gross earnings of said companies, to exempt all their property from other taxation. In 1895 said lands were taxed and the three per cent tax also continued. *Held*, that the legislation of 1895 impaired the obligation of a contract.

This case differs from other cases that railroad aid legislation has produced in holding that a Legislature when acting for the State as trustee of public lands, has the freedom of judgment of a trustee; is not limited by the constitutional provisions regarding taxation, and may make an irrevocable contract